

2013 DRAFTING REQUEST

Bill

Received:	3/12/2013	Received By:	rkite
Wanted:	As time permits	Same as LRB:	
For:	Thomas Larson (608) 266-1194	By/Representing:	David Lovell
May Contact:		Drafter:	rkite
Subject:	Nat. Res. - nav. waters Public Util. - electric	Addl. Drafters:	emueller mkunkel
		Extra Copies:	MDK EVM

Submit via email: **YES**
 Requester's email: **Rep.Larson@legis.wisconsin.gov**
 Carbon copy (CC) to: **David.Lovell@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Navigable waters permit procedures for public utilities

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 4/25/2013			_____			
/P1	rkite 11/14/2013	wjackson 8/13/2013	jmurphy 8/14/2013	_____	sbasford 8/14/2013		

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/P2	rkite 12/3/2013	wjackson 11/20/2013	jmurphy 11/20/2013	_____	srose 11/20/2013		
/1	rkite 1/14/2014	wjackson 12/5/2013	jmurphy 12/5/2013	_____	srose 12/5/2013		State
/2	rkite 1/21/2014	wjackson 1/21/2014	jfrantze 1/22/2014	_____	mbarman 1/22/2014	srose 1/27/2014	State

FE Sent For:

atjnto
2/18/14

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Subject: Nat. Res. - nav. waters Addl. Drafters: ~~emueller~~
Public Util. - electric mkunkel

Extra Copies:

WJL
JLB
MDK
EVM

Submit via email: YES
Requester's email: Rep.Larson@legis.wisconsin.gov
Carbon copy (CC) to: David.Lovell@legis.wisconsin.gov

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/1		wjackson 12/5/2013	jmurphy 12/5/2013	_____	srose 12/5/2013		State

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1/2 WJ 1/21

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Wanted: **As time permits** Same as LRB:
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May Contact: Drafter: **rkite**
Subject: **Nat. Res. - nav. waters** Addl. Drafters: **emueller**
Public Util. - electric **mkunkel**
Extra Copies: **WLJ**
JLD

Submit via email: **YES**
Requester's email: **Rep.Larson@legis.wisconsin.gov**
Carbon copy (CC) to: **David.Lovell@legis.wisconsin.gov**

Pre Topic:

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Topic:

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Instructions:

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*Just for
8/12/5*

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 For: Thomas Larson (608) 266-1194 By/Representing: David Lovell
 May Contact: Drafter: rkite
 Subject: Nat. Res. - nav. waters Addl. Drafters:
 Public Util. - electric Extra Copies:

Submit via email: YES
 Requester's email: Rep.Larson@legis.wisconsin.gov
 Carbon copy (CC) to: David.Lovell@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

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/P2		wjackson 11/20/2013	jmurphy 11/20/2013		srose 11/20/2013		

Eds / LPS 11/20
 See two previous request sheets.
 Addl. drafters and Extra Copies have not been updated.
 Please fix for next.

FE Sent For:

<END>

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Received: 3/12/2013 Received By: rkite
 Wanted: As time permits Same as LRB:
 For: Thomas Larson (608) 266-1194 By/Representing: David Lovell
 May Contact: Drafter: rkite
 Subject: Nat. Res. - nav. waters Addl. Drafters:
 Public Util. - electric Extra Copies: JLD
 Submit via email: YES WLS
 Requester's email: Rep.Larson@legis.wisconsin.gov
 Carbon copy (CC) to: David.Lovell@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

See attached

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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/p2WLS 11/20

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For: **Thomas Larson (608) 266-1194**

By/Representing: **David Lovell**

May Contact:

Drafter: **rkite**

Subject: **Nat. Res. - nav. waters
Public Util. - electric**

Addl. Drafters: **MDK + EVM**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Larson@legis.wisconsin.gov**

Carbon copy (CC) to: **David.Lovell@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

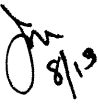
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/P1	rkite			_____	_____	_____	_____

FE Sent For:

<END>

2013 DRAFTING REQUEST**Bill**

Received: 3/12/2013

Received By: rkite

Wanted: As time permits

Same as LRB:

For: ~~Chris Larson (608) 266-7505~~

By/Representing: David Lovell

Thomas Larson

May Contact:

Drafter: rkite

Subject: Nat. Res. - nav. waters
Public Util. - electric

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Larson@legis.wisconsin.gov

Carbon copy (CC) to: David.Lovell@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Navigable waters permit procedures for public utilities

Instructions:

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/?	rkite						
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*LC
conversion
PH
3/22*

FE Sent For:

<END>

*Hold
(per David Lovell)
RNR**xed
04-25-13*

Kite, Robin

From: Lovell, David
Sent: Tuesday, March 12, 2013 10:54 AM
To: Rep.Larson
Cc: Pulda, Matt; Rep.Honadel; Vick, Jason; Sen.Farrow; Gustafson, Andrew; Robert Fassbender (fassbender@hamilton-consulting.com); Emily S. Kelchen (kelchen@hamilton-consulting.com); Kite, Robin
Subject: utility facility siting draft

Representative Larson,

Attached is the draft legislation you requested regarding the DNR and PSC review of proposed utility facilities. I have prepared it based on instructions from Bob Fassbender at Hamilton Consulting, representing Xcel Energy. Per your instructions, I am sharing the draft with Representative Honadel and Senator Farrow; I am also sending it to Mr. Fassbender and his associate, Emily Kelchen.

I have also take the draft to the LRB, and submitted a drafting request in your name. Robin Kite will be the principle drafter, I believe. Because this draft will undergo further discussion, among the utilities and possibly with the agencies, and because of the current demands of drafting for the budget, I did not give any kind of deadline for a draft from them. I have suggested that the drafters familiarize themselves with the project, but not get too deeply into the drafting until we are more confident that the instructions won't change drastically.

Best regards,

David Lovell



0072_1.pdf

David L. Lovell, Senior Analyst
Wisconsin Legislative Council
608-266-1537

1 **AN ACT** *to repeal* 30.025 (1s) (b), 30.025 (2s) (a) 1. to 2. and 30.025 (3) (b); *to*
2 *renumber* 30.025 (1b) (a); *to renumber and amend* 30.025 (1s) (a) and 30.025 (2s)
3 (a) (intro.); *to consolidate, renumber and amend* 30.025 (3) (intro.) and (a); *to*
4 *amend* 30.025 (1b) (b), 30.025 (1e), 30.025 (1m), 30.025 (2), 30.025 (2s) (b) and
5 30.025 (4); *to repeal and recreate* 30.025 (1b) (c) and 30.025 (2g); and *to create*
6 30.025 (1b) (ag), 30.025 (1b) (d), 30.025 (1e) (c), 30.025 (1s) (a) (title), (intro.) and
7 1., 30.025 (1s) (c) to (f), 30.025 (3) (c) to (e), 30.025 (4m), 30.12 (1o), 30.20 (1g)
8 (L), 59.692 (1o), 196.491 (3) (a) 3. c. and 196.492 of the statutes; **relating to:**
9 review of proposed utility facilities by the department of natural resources and the
10 public service commission.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: This draft relates to the review by the department of natural resources (DNR) and the public service commission (PSC) of applications for approval to construct electric utility facilities. The specific DNR approvals relate to impacts to navigable waters and wetlands, found primarily in ch. 30, stats.; the specific PSC approvals are the certificate of authority (CA) under s. 196.49, stats., and the certificate of public convenience and necessity (CPCN) under s. 196.491 (3), stats.

Current s. 30.025, stats., is designed to coordinate the review by the DNR and the PSC of utility construction projects that require permits relating to navigable waters and wetlands. It requires that an applicant submit a single application to the DNR for all pertinent permits and that it submit this application at the same time that it submits an application to the PSC for a CA or CPCN. To provide coordination between the DNR and PSC review processes, the DNR must provide certain information to the PSC and must participate in any PSC investigations or proceedings regarding the project. The process also includes a preapplication phase, in which the DNR and applicant meet to make a

If an applicant chooses to file a single, combined application with the DNR, most provisions of current law apply. In particular, the applicant must file its application with the DNR at the same time that it files its application with the PSC, and the DNR must provide certain information to the PSC, participate in any PSC investigations or proceedings regarding the project, and render a final decision on the issuance of permits for the project no later than 30 days after the PSC takes final action on the application before it.

If an applicant chooses to file separate applications for each DNR approval required for the project, it may file them at any time, without regard to when it files its application with the PSC. The DNR is required to submit certain information to the PSC, as described below, but does not participate in PSC investigations or proceedings. Under this scenario, the DNR must render a final decision on the issuance of permits for the project no later than 120 days after the date of closure (described below) or 30 days after the PSC takes final action on the application before it, whichever is earlier.

All other aspects of the review and approval of permit applications are identical for applicants that choose to submit combined or separate DNR applications.

DNR REVIEW OF APPLICATIONS AND PERMIT ISSUANCE

Under current law, when reviewing an application for a permit under subch. II of ch. 30, stats., the DNR is limited in the number of times it may require an applicant to submit supplemental information and in the time it may take in determining whether an application is complete. The date on which the DNR determines that an application is complete, or the date of the deadline for the DNR to make this determination, whichever is earlier, is termed the "date of closure". These requirements do not apply to applications that are reviewed under s. 30.025. The draft applies these requirements to those applications.

Under current s. 30.025, if the DNR has participated in the PSC's process and the PSC's decision is consistent with information provided by the DNR, the DNR is required to treat a PSC decision to approve a utility project as concluding that there are no practicable alternatives to the project. In addition, if these conditions pertain, the DNR may not require the applicant to conduct any further analysis of utility facility alternatives. The draft states simply that a PSC decision to approve a utility project is a conclusive finding that there are no practicable alternatives, and that the DNR may not require any further analysis of utility facility alternatives, regardless of whether the DNR has

1. The DNR must review proposed projects, including each proposed location, site, or route, and identify and communicate to the PSC factors that would lead it to deny or place conditions on required permits for the project. (Although not stated explicitly, in the case of an applicant submitting a separate application for each DNR permit, this review would be based on information obtained in the preapplication phase of the DNR review process.)
2. The PSC must consider the input from the DNR.
3. The DNR may not deny or place conditions on a permit unless it has informed the PSC under item 1., above, that the denial or conditions would be necessary.

OTHER PROVISIONS

Under current law, the CPCN statute includes certain procedural requirements related to the DNR review of proposed utility projects. The draft specifies that these provisions do not apply to a permit that is subject to s. 30.025.

The draft repeals an apparently superfluous provision stating that a person who applies to the commission for a CA or CPCN is eligible to apply under s. 30.025 for any permit that the utility facility may require and to receive such permit.

The draft creates the following exemptions from certain water-related regulations for specified utility activities:

1. From the requirements that a person obtain a permit for the placement of material on the bed of a navigable water or the removal of material from the bed of a navigable water, an exemption for the placement or removal of material affecting not more than one tenth of one acre for the purpose of responding to or cleaning up an inadvertent release of drilling fluid associated with directional boring.
2. From the requirement that a person obtain a permit for the placement of material on the bed of a navigable water, an exemption for the temporary use or placement of equipment or a structure within an existing utility corridor to install, repair, replace, remove, or maintain utility facilities, including a pole, support anchor, culvert, clear span bridge, construction mat used to protect wetland or land below the ordinary high water mark, or vehicle driven on the bed of a navigable water.
3. From the shoreland zoning statute and local ordinances enacted under that statute, an exemption for the construction and maintenance of electric, gas, telephone, water, or sewerage collection, transmission, or

1 if the applicant is required to obtain, or give notification of the ~~wish~~ intention to proceed under,
2 one or more permits.

3 (b) This section does not apply to a ~~proposal to construct a utility facility~~ utility project
4 if the only permit that the ~~utility facility~~ applicant is required to obtain from the department
5 is a storm water discharge permit under s. 283.33 (1) (a) or authority to proceed under a general
6 storm water discharge permit under s. 283.35.

7 **SECTION 7.** 30.025 (1e) (c) of the statutes is created to read:

8 30.025 (1e) (c) This section does not apply unless one of the following applies:

9 1. The applicant is required to obtain a certificate from the public service commission
10 under s. 196.49 or 196.491 (3).

11 2. The applicant is a wholesale electric cooperative, as defined in s. 16.957 (1) (v).

NOTE: Section 16.957 (1) (v) defines "wholesale electric cooperative" as
"a cooperative association that is organized under ch. 185 for the
purpose of providing electricity at wholesale to its members only".

12 **SECTION 8.** 30.025 (1m) of the statutes is amended to read:

13 30.025 (1m) PREAPPLICATION PROCESS. Before filing an application under this section,
14 ~~a person proposing to construct a utility facility~~ an applicant shall notify the department of the
15 intention to file an application. After receiving such notice, the department shall confer with
16 the ~~person~~ applicant, in cooperation with the commission if the utility project is subject to s.
17 196.49 or 196.491 (3), to make a preliminary assessment of the project's scope, to make an
18 analysis of alternatives, and to identify potential interested persons, and to ensure that the
19 person making the proposal is aware. At the time the department confers with the applicant,
20 the department shall provide the applicant written notice of all of the following:

21 (a) The permits that the ~~person~~ applicant may be required to obtain and the permits
22 under which the ~~person~~ applicant must give notification of the ~~wish~~ intention to proceed.

1 30.025 (1s) (c) *Review; no additional information required.* In issuing permits or
2 entering contracts under this section, the department shall review an application, and within
3 30 days after the application is submitted, the department shall determine that either the
4 application is complete or that additional information is needed. If the department determines
5 that the application is complete, the department shall notify the applicant in writing of that fact
6 within the 30-day period, and the date on which the notice under this paragraph is sent shall
7 be considered the date of closure.

8 (d) *Additional information requested.* If the department determines that the application
9 is incomplete, the department shall notify the applicant in writing and may make only one
10 request for additional information during the 30-day period specified in par. (c). Within 10
11 days after receiving all of the requested information from the applicant, the department shall
12 notify the applicant in writing as to whether the application is complete. The date on which
13 the 2nd notice under this paragraph is sent shall be set as the date of closure. The department
14 may request additional information from the applicant to supplement the application, but the
15 department may not request items of information that are outside the scope of the original
16 request unless the applicant and the department both agree. A request for any such additional
17 information may not affect the date of closure.

18 (e) *Specificity of notice; limits on information.* Any notice stating that an application
19 has been determined to be incomplete or any other request for information that is sent under
20 par. (d) shall state the reason for the determination or request and the specific items of
21 information that are still needed and the statutory authority explicitly requiring the
22 information.

1 **SECTION 14.** 30.025 (2g) of the statutes is repealed and recreated to read:

2 **30.025 (2g) SUBMISSION OF INFORMATION TO COMMISSION.** (a) This subsection applies
3 to a utility project that is subject to s. 196.49 or 196.491 (3).

4 (b) The department shall review every proposed utility project that is subject to this
5 subsection, including each location, site, or route proposed for each utility facility, to assess
6 whether each proposed location, site, or route can meet the criteria for obtaining the individual
7 permits or proceeding under the authority of general permits identified by the department
8 under sub. (1m) (a). The department shall provide the commission with information that is
9 relevant to only the statutes administered by the department and rules promulgated under those
10 statutes that the department has explicit authority to enforce.

11 (c) The department shall identify and communicate to the commission all of the
12 following with regard to each proposed location, site, or route:

13 1. Factors that would require the department to deny one or more permit required for
14 the proposed utility facility to be constructed at the location or site or on the route.

15 2. Factors that would require the department to impose conditions on one or more
16 permits required for the proposed utility facility to be constructed at the location or site or on
17 the route. The department shall identify the nature of the conditions that would be required
18 and the purposes that the conditions would be intended to accomplish.

19 (d) If the application was submitted under sub. (1s) (a) 2., the department shall
20 participate in commission investigations or proceedings under s. 196.49 or 196.491 (3) with
21 regard to the proposed utility facility.

22 **SECTION 15.** 30.025 (2s) (a) (intro.) of the statutes is renumbered 30.025 (2s) (a) and
23 amended to read:

1 1. Deny a permit for a proposed utility facility at a location or site or on a route if the
2 department did not identify under sub. (2g) (c) 1. factors that would require it to deny the
3 permit.

4 2. Impose conditions on a permit that the department did not identify as necessary under
5 sub. (2g) (c) 2. or that are different in nature than the conditions the department identified as
6 necessary under sub. (2g) (c) 2.

7 (d) 1. If the application was submitted under sub. (1s) (a) 1., the department shall grant
8 or deny the application within 120 days of the date of closure.

9 2. If the application was submitted under sub. (1s) (a) 2., the department shall grant or
10 deny the application within 30 days of the date on which the commission issues its decision
11 under s. 196.49 or 196.491 (3) or within 120 days of the date of closure, whichever is sooner.

12 (e) If the department fails to comply with the pertinent time limit under par. (d), a
13 decision issuing the permit or authorizing the applicant to proceed shall be considered to be
14 rendered. The permit or authorization to proceed that is rendered shall authorize the activity
15 as proposed by the applicant, but the department may impose terms and conditions on the
16 permit or authorization that are consistent with the applicant's basic proposal.

17 **SECTION 21.** 30.025 (4) of the statutes is amended to read:

18 30.025 (4) PERMIT CONDITIONS. ~~The permit may be issued, or the authority to proceed~~
19 ~~under a permit may be granted, Except as provided in sub. (3) (c) 2., the department may issue~~
20 ~~any individual permit or authorize the applicant to proceed under any general permit required~~
21 ~~for the utility project~~ upon stated conditions deemed necessary to assure ensure compliance
22 with the criteria criterion designated under sub. (3). ~~The department shall grant or deny the~~
23 ~~application for a permit for the utility facility within 30 days of the date on which the~~
24 ~~commission issues its decision under s. 196.49 or 196.491 (3).~~

NOTE: With regard to par. (b):

1. Note that “minor amount”, used in earlier drafts, is replaced with “does not affect more than one tenth of one acre”.
2. Is the placement of material temporary? Should the word “temporary” be added?
3. Is a definition of “directional boring” needed?
4. Is the word “inadvertent” needed?

1 **SECTION 24.** 30.20 (1g) (L) of the statutes is created to read:

2 **30.20 (1g) (L)** The removal of material that is associated with the response to or clean
3 up of an inadvertent release of drilling fluid associated with directional boring, if the removal
4 does not affect more than one tenth of one acre.

NOTE: See the note following the treatment of s. 30.12 (1o) (b).

5 **SECTION 25.** 59.692 (1o) of the statutes is created to read:

6 **59.692 (1o)** In this subsection, “electric cooperative” means a cooperative association
7 that is organized under ch. 185 for the purpose of providing electricity at wholesale or retail
8 to its members only. This section and ordinances enacted under this section do not apply to
9 a project for the construction and maintenance of electric, gas, telephone, water, or sewerage
10 collection, transmission, or distribution facilities conducted by a public utility or an electric
11 cooperative in a shoreland if one of the following applies:

12 (a) The department has issued [a permit] [all permits] required under chs. 30 or 31
13 related to impacts to navigable waters [or] [and] chs. 281 [or] [and] 283 related to impacts to
14 wetlands that [is] [are] required for the project.

15 (b) No permits are required under ch. 30 or 31 related to impacts to navigable waters
16 or ch. 281 or 283 related to impacts to wetlands for the project and the person conducting the
17 project employs best management practices related to storm water management.

Kite, Robin

From: Lovell, David
Sent: Tuesday, May 14, 2013 4:48 PM
To: Robert Fassbender (fassbender@hamilton-consulting.com)
Cc: Emily S. Kelchen (kelchen@hamilton-consulting.com); Rep.Larson; Pulda, Matt; Kite, Robin
Subject: transmission draft

Bob,

I met with Robin Kite this afternoon to go over the transmission draft, as she starts working on it. There are a number of questions embedded in the draft for which I still have not gotten answers – see especially pages 15 and 16. Robin will not be able to complete this project until she has answers to those questions. Please contact whomever you need to contact in order to get those answers for her. You can send answers directly to her, for efficiency, but I would appreciate being copied.

Thanks –

David

David L. Lovell, Senior Analyst
Wisconsin Legislative Council
608-266-1537

Kite, Robin

From: Pulda, Matt
Sent: Wednesday, May 01, 2013 3:49 PM
To: Kite, Robin
Subject: FW: utility facility siting draft

Hi, Robin,

Our office has been waiting to hear back from the utilities since a meeting we held with them in early April, but Bob Fassbender says he hasn't received any real feedback from them. That being the case, I suspect that we won't be making many changes to the WLC draft David prepared, so would you please begin drafting this bill?

Please let me know if you have any questions. You may also contact Bob Fassbender directly, if that makes things easier.

Thanks!

Matt Pulda
Research Assistant/Committee Clerk
Office of State Rep. Tom Larson
Assembly Committee on Family Law
(608) 266-1194

From: Lovell, David
Sent: Tuesday, March 12, 2013 10:54 AM
To: Rep.Larson
Cc: Pulda, Matt; Rep.Honadel; Vick, Jason; Sen.Farrow; Gustafson, Andrew; Robert Fassbender (fassbender@hamilton-consulting.com); Emily S. Kelchen (kelchen@hamilton-consulting.com); Kite, Robin
Subject: utility facility siting draft

Representative Larson,

Attached is the draft legislation you requested regarding the DNR and PSC review of proposed utility facilities. I have prepared it based on instructions from Bob Fassbender at Hamilton Consulting, representing Xcel Energy. Per your instructions, I am sharing the draft with Representative Honadel and Senator Farrow; I am also sending it to Mr. Fassbender and his associate, Emily Kelchen.

I have also take the draft to the LRB, and submitted a drafting request in your name. Robin Kite will be the principle drafter, I believe. Because this draft will undergo further discussion, among the utilities and possibly with the agencies, and because of the current demands of drafting for the budget, I did not give any kind of deadline for a draft from them. I have suggested that the drafters familiarize themselves with the project, but not get too deeply into the drafting until we are more confident that the instructions won't change drastically.

Best regards,

David Lovell



0072_1.pdf

David L. Lovell, Senior Analyst
Wisconsin Legislative Council
608-266-1537

Transmission Siting /4 Drafting Questions

✓ Page 7, first note. Section 16.957 (1) (v) defines “wholesale electric cooperative” as “a cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale to its members only”.

30.025 (1e) (c) This section does not apply unless one of the following applies:

1. The applicant is required to obtain a certificate from the public service commission under s. 196.49 or 196.491 (3).
2. The applicant is a wholesale electric cooperative, as defined in s. 16.957 (1) (v).

Answer: 1. To add the distribution cooperatives to the bill, we suggest the following change to Section 7 of the draft, replacing proposed 30.025 (1e)(c)2. with: “The applicant is an electric cooperative, as defined in s. 196.025 (5)(ag).”

✓ Page 15, first note, 1 and second note. Note that “minor amount”, used in earlier drafts, is replaced with “does not affect more than one tenth of one acre”.

30.12 (1o) UTILITY FACILITIES. An electric public utility or a wholesale electric cooperative, as defined in s. 16.957 (1) (v), is exempt from the permit requirements under this section for any of the following:

- (b) The deposit of material that is associated with the response to or clean up of an inadvertent release of drilling fluid associated with directional boring, if the deposit does not affect more than one tenth of one acre.

Answer: One tenth of an acre is consistent with the Army Corps of Engineers, so that is the preferred language.

✓ Page 15, first note, 2. Is the placement of material temporary? Should the word “temporary” be added?

30.12 (1o) UTILITY FACILITIES. An electric public utility or a wholesale electric cooperative, as defined in s. 16.957 (1) (v), is exempt from the permit requirements under this section for any of the following:

- (b) The deposit of material that is associated with the response to or clean up of an inadvertent release of drilling fluid associated with directional boring, if the deposit does not affect more than one tenth of one acre.

Answer: Although we make every effort to remove all of the material, some small residual that is virtually impossible to remove may be left. Limiting this exemption to “temporary” deposits or releases is inaccurate although temporary deposits would be exempt. The intent is for the exemption to apply to small deposits, temporary or not, that do not affect more than one tenth of one acre.

Page 15, first note, 3. Is a definition of "directional boring" needed?

30.12 (1o) UTILITY FACILITIES. An electric public utility or a wholesale electric cooperative, as defined in s. 16.957 (1) (v), is exempt from the permit requirements under this section for any of the following:

(b) The deposit of material that is associated with the response to or clean up of an inadvertent release of drilling fluid associated with directional boring, if the deposit does not affect more than one tenth of one acre.

✓ Answer: No, the meaning of that is well-understood in the industry and by regulators.

Page 15, first note, 4. Is the word "inadvertent" needed?

30.12 (1o) UTILITY FACILITIES. An electric public utility or a wholesale electric cooperative, as defined in s. 16.957 (1) (v), is exempt from the permit requirements under this section for any of the following:

(b) The deposit of material that is associated with the response to or clean up of an inadvertent release of drilling fluid associated with directional boring, if the deposit does not affect more than one tenth of one acre.

✓ Answer: No, we never intend to spill, so "inadvertent" is unnecessary.

Page 16, first note. The drafting instructions refer to **a** permit required, but s. 59.692(1o) (a) is drafted here with the alternative of referring instead to **all** permits required. Which option should be used?

59.692 (1o) In this subsection, "electric cooperative" means a cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale or retail to its members only. This section and ordinances enacted under this section do not apply to a project for the construction and maintenance of electric, gas, telephone, water, or sewerage collection, transmission, or distribution facilities conducted by a public utility or an electric cooperative in a shoreland if one of the following applies:

(a) The department has issued [a permit] [all permits] required under chs. 30 or 31 related to impacts to navigable waters [or] [and] chs. 281 [or] [and] 283 related to impacts to wetlands that [is] [are] required for the project.

Answer: It should be all, there is typically more than one permit involved.

Page 16, second note. The references to permits under chs. 30, 31, 281, and 283, stats., are overly broad; more precise references to specific permits should be provided. Consider referencing the definition of "permit" in s. 30.025 (1b) (b).

59.692 (1o) In this subsection, "electric cooperative" means a cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale or retail to its members only. This section and ordinances enacted under this section do not apply to a project for the construction and maintenance of electric, gas, telephone, water, or sewerage collection, transmission, or distribution facilities conducted by a public utility or an electric cooperative in a shoreland if one of the following applies:

(a) The department has issued [a permit] [all permits] required under chs. 30 or 31 related to impacts to navigable waters [or] [and] chs. 281 [or] [and] 283 related to impacts to wetlands that [is] [are] required for the project.

Answer: Referencing permits as defined in s. 30.025 (1b) (b) ["Permit" means an individual permit, a general permit, an approval, or a contract required under this subchapter or subch. II, a permit or an approval required under ch. 31, an endangered species incidental taking permit required under s. 29.604 (6m), a storm water discharge permit required under s. 283.33 (1) (a), authority to proceed under a general storm water discharge permit under s. 283.35, or a wetland general permit or wetland individual permit required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a).] is a good idea.

Page 16, third note. What are the best management practices referred to in s. 59.692 (1o) (b), as drafted here? Who determines them?

59.692 (1o) In this subsection, "electric cooperative" means a cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale or retail to its members only. This section and ordinances enacted under this section do not apply to a project for the construction and maintenance of electric, gas, telephone, water, or sewerage collection, transmission, or distribution facilities conducted by a public utility or an electric cooperative in a shoreland if one of the following applies:

(a) The department has issued [a permit] [all permits] required under chs. 30 or 31 related to impacts to navigable waters [or] [and] chs. 281 [or] [and] 283 related to impacts to wetlands that [is] [are] required for the project.

(b) No permits are required under ch. 30 or 31 related to impacts to navigable waters or ch. 281 or 283 related to impacts to wetlands for the project and the person conducting the project employs best management practices related to storm water management.

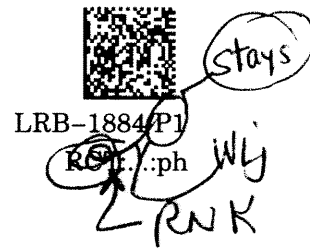
Answer: Best management practices is a general term used to refer to methods or techniques developed by agencies and industry that are widely accepted to be the most effective and practical means of achieving an objective (such as preventing or minimizing pollution). Best management practices can evolve over time as methods or techniques are improved and therefore, referencing a specific set of best management practices in the language would be unnecessarily limiting. The language as drafted is preferred.

Page 16, fourth note. In excluding permits subject to s. 30.025 from the procedures specified in s. 196.491 (3) (a) 3., it is necessary to review s. 30.025 to ensure that sufficient procedures are specified in that section.

Answer: The process in 30.025 is sufficient.



soon
State of Wisconsin
2013 - 2014 LEGISLATURE



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*In
8/5*

D-Note

regen. cat.

1 **AN ACT** *to repeal* 30.025 (1s) (b), 30.025 (2s) (a) 1. to 2. and 30.025 (3) (b); *to*
2 *renumber* 30.025 (1b) (a); *to renumber and amend* 30.025 (1s) (a) and 30.025
3 (2s) (a) (intro.); *to consolidate, renumber and amend* 30.025 (3) (intro.) and
4 (a); *to amend* 30.025 (1b) (b), 30.025 (1e), 30.025 (1m), 30.025 (2), 30.025 (2s)
5 (b) and 30.025 (4); *to repeal and recreate* 30.025 (1b) (c) and 30.025 (2g); and
6 *to create* 30.025 (1b) (ag), 30.025 (1b) (d), 30.025 (1e) (c), 30.025 (1s) (a) (title),
7 (intro.) and 1., 30.025 (1s) (c) to (f), 30.025 (3) (c) to (e), 30.025 (4m), 30.12 (1o),
8 30.20 (1g) (L), 59.692 (1o), 196.491 (3) (a) 3. c. and 196.492 of the statutes;
9 **relating to:** review of proposed utility facilities by the department of natural
10 resources and the public service commission.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft relates to the review by the department of natural resources (DNR) and the public service commission (PSC) of applications for approval to construct electric utility facilities. The specific DNR approvals relate to impacts to navigable waters and wetlands, found primarily in ch. 30, stats.; the specific PSC approvals are the certificate of authority (CA) under s. 196.49, stats., and the certificate of public convenience and necessity (CPCN) under s. 196.491 (3), stats.

Current s. 30.025, stats., is designed to coordinate the review by the DNR and the PSC of utility construction projects that require permits relating to navigable waters and wetlands. It requires that an applicant submit a single application to the DNR for all pertinent permits and that it submit this application at the same time that it submits an application to the PSC for a CA or CPCN. To provide coordination between the DNR and PSC review processes, the DNR must provide certain information to the PSC and must participate in any PSC investigations or proceedings regarding the project. The process also includes a preapplication phase, in which the DNR and applicant meet to make a preliminary determination of the project's scope, analyze alternatives to the project, identify potential interested persons, and provide the applicant with certain information about the permit application review process.

APPLICABILITY AND DEFINITIONS

Current s. 30.025 applies to proposals to construct utility facilities for which the person constructing the facilities must obtain one or more permit. The definitions and applicability provision of this section limit its applicability to projects for which a CPCN is required and projects of the type for which a CA is required, regardless of whether the person constructing the facilities is subject to the CA statute. As a result, it applies to all projects of those types constructed by a public utility, a retail or wholesale electric cooperative, or any other person (primarily merchant electric generators).

The draft revises the definition of "utility facility" and the applicability provision with the result that s. 30.025 applies to all of the following:

1. Any project for which a CPCN is required, which includes projects of electric public utilities, retail and wholesale electric cooperatives (though, in practice, only wholesale cooperatives would be affected), and others.
2. Any project for which a CA is required, which includes only projects conducted by electric public utilities.
3. Any project conducted by a wholesale electric cooperative, which includes the types of projects included under current law plus projects below the threshold for the CA requirement.

The draft also revises the definition of "permit" and provides definitions of "applicant" and "utility project". Current s. 30.025 applies only to the construction of utility facilities, while the new definition of "utility project" expands this to projects to construct, extend, improve, or add to utility facilities.

Numerous provisions of current s. 30.025 require that certain steps in the permit application review be conducted in cooperation with the PSC. The draft specifies that this requirement applies only to those projects that are subject to the CPCN or CA requirements.

FILING OF APPLICATIONS

The draft gives an applicant 2 choices: it may file a single, combined application for all DNR permits, as under current law; or it may file separate applications for each required DNR permit.

If an applicant chooses to file a single, combined application with the DNR, most provisions of current law apply. In particular, the applicant must file its application with the DNR at the same time that it files its application with the PSC, and the DNR must provide certain information to the PSC, participate in any PSC investigations or proceedings regarding the project, and render a final decision on the issuance of permits for the project no later than 30 days after the PSC takes final action on the application before it.

If an applicant chooses to file separate applications for each DNR approval required for the project, it may file them at any time, without regard to when it files its application with the PSC. The DNR is required to submit certain information to the PSC, as described below, but does not participate in PSC investigations or proceedings. Under this scenario, the DNR must render a final decision on the issuance of permits for the project no later than 120 days after the date of closure (described below) or 30 days after the PSC takes final action on the application before it, whichever is earlier.

All other aspects of the review and approval of permit applications are identical for applicants that choose to submit combined or separate DNR applications.

DNR REVIEW OF APPLICATIONS AND PERMIT ISSUANCE

Under current law, when reviewing an application for a permit under subch. II of ch. 30, stats., the DNR is limited in the number of times it may require an applicant to submit supplemental information and in the time it may take in determining whether an application is complete. The date on which the DNR determines that an application is complete, or the date of the deadline for the DNR to make this determination, whichever is earlier, is termed the “date of closure”. These requirements do not apply to applications that are reviewed under s. 30.025. The draft applies these requirements to those applications.

Under current s. 30.025, if the DNR has participated in the PSC’s process and the PSC’s decision is consistent with information provided by the DNR, the DNR is required to treat a PSC decision to approve a utility project as concluding that there are no practicable alternatives to the project. In addition, if these conditions pertain, the DNR may not require the applicant to conduct any further analysis of utility facility alternatives. The draft states simply that a PSC decision to approve a utility project is a conclusive finding that there are no practicable alternatives, and that the DNR may not require any further analysis of utility facility alternatives, regardless of whether the DNR has participated in the PSC’s process or whether the PSC’s decision is consistent with information provided by the DNR.

Current s. 30.025 requires the DNR to issue a permit if the applicant has shown the following:

1. The proposal complies with environmental statutes administered by the DNR and rules promulgated thereunder and federal environmental standards the DNR has authority to enforce.
2. The proposal does not unduly affect public rights and interests in navigable waters; the effective flood flow capacity of a stream; the rights of other riparian owners; or water quality.

The draft repeals the second set of conditions and revises the first set by deleting reference to federal standards and limiting it to statutes and rules the DNR has *explicit* authority to enforce.

Under current s. 30.025, when providing information to the PSC, the DNR must provide information that is relevant only to: environmental issues that concern the proposed utility facility; public rights in navigable waters; and location, site, or route

issues concerning the proposed utility facilities, including alternative locations, sites, or routes. The draft replaces this with a requirement that the DNR provide the PSC information that is relevant to only the statutes administered by the department and rules promulgated under those statutes that the department has explicit authority to enforce.

The draft creates a new provision stating that, when providing information to the PSC or making findings or determinations, the DNR must provide a written demonstration that the information, finding, or determination is:

1. Consistent with the DNR's authority.
2. Based on sufficient facts or data and is the product of reliable principles and methods, which the DNR has reliably applied.

UTILITY FACILITY SITING

Under current law, the siting of utility facilities is determined through the combined decision-making processes of the DNR and the PSC. The draft states that the PSC has sole jurisdiction over the approval of locations, sites, or routes for utility facilities that are subject to the CPCN or CA requirements. It creates the following procedures to ensure adequate input from the DNR to allow the DNR to permit the project as approved by the PSC:

1. The DNR must review proposed projects, including each proposed location, site, or route, and identify and communicate to the PSC factors that would lead it to deny or place conditions on required permits for the project. (Although not stated explicitly, in the case of an applicant submitting a separate application for each DNR permit, this review would be based on information obtained in the preapplication phase of the DNR review process.)
2. The PSC must consider the input from the DNR.
3. The DNR may not deny or place conditions on a permit unless it has informed the PSC under item 1., above, that the denial or conditions would be necessary.

OTHER PROVISIONS

Under current law, the CPCN statute includes certain procedural requirements related to the DNR review of proposed utility projects. The draft specifies that these provisions do not apply to a permit that is subject to s. 30.025.

The draft repeals an apparently superfluous provision stating that a person who applies to the commission for a CA or CPCN is eligible to apply under s. 30.025 for any permit that the utility facility may require and to receive such permit.

The draft creates the following exemptions from certain water-related regulations for specified utility activities:

1. From the requirements that a person obtain a permit for the placement of material on the bed of a navigable water or the removal of material from the bed of a navigable water, an exemption for the placement or removal of material affecting not more than one tenth of one acre for the purpose of responding to or cleaning up an inadvertent release of drilling fluid associated with directional boring.
2. From the requirement that a person obtain a permit for the placement of material on the bed of a navigable water, an exemption for the temporary use or placement of equipment or a structure within an existing utility corridor to install, repair, replace, remove, or maintain utility facilities, including a pole, support anchor, culvert, clear span bridge, construction mat used to protect wetland or land below the ordinary high water mark, or vehicle driven on the bed of a navigable water.

3. From the shoreland zoning statute and local ordinances enacted under that statute, an exemption for the construction and maintenance of electric, gas, telephone, water, or sewerage collection, transmission, or distribution facilities conducted by a public utility or an electric cooperative in a shoreland if the DNR has issued necessary permits related to impacts of navigable waters and wetlands or no such permits are required.

1 **SECTION 1.** 30.025 (1b) (a) of the statutes is renumbered 30.025 (1b) (ar). ✓

2 **SECTION 2.** 30.025 (1b) (ag) of the statutes is created to read:

3 30.025 (1b) (ag) "Applicant" means an applicant for a permit related to a utility

4 project to which this section applies. — INS. 5-4 ✓

5 **SECTION 3.** 30.025 (1b) (b) of the statutes is amended to read:

6 30.025 (1b) (b) "Permit" means an individual permit, a general permit, an
7 approval, or a contract required under this subchapter or subch. II, a permit or an
8 approval required under ch. 31, an endangered species incidental taking permit
9 required under s. 29.604 (6m), a storm water discharge permit required under s.
10 283.33 (1) (a), authority to proceed under a general storm water discharge permit
11 required under s. 283.35, or a wetland general permit or wetland individual permit required
12 under s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement
13 33 USC 1341 (a).

14 **SECTION 4.** 30.025 (1b) (c) of the statutes is repealed and recreated to read:

15 30.025 (1b) (c) "Utility facility" means any plant, equipment, property, or
16 facility for the generation, transmission, or distribution of electric power.

17 **SECTION 5.** 30.025 (1b) (d) of the statutes is created to read:

18 30.025 (1b) (d) "Utility project" means a project to construct, extend, improve,
19 or add to a utility facility.

20 **SECTION 6.** 30.025 (1e) of the statutes is amended to read:

21 30.025 (1e) **APPLICABILITY.** (a) Except as provided in par. (b) pars. (b) and (c),
22 this section applies to a proposal to construct a utility facility if the utility facility

1 utility project if the applicant is required to obtain, or give notification of the wish
2 intention to proceed under, one or more permits.

3 (b) This section does not apply to a ~~proposal to construct a utility facility~~ utility
4 project if the only permit that the ~~utility facility~~ applicant is required to obtain from
5 the department is a storm water discharge permit under s. 283.33 (1) (a) or authority
6 to proceed under a ^{general} storm water discharge permit under s. 283.35.

7 **SECTION 7.** 30.025 (1e) (c) of the statutes is created to read:

8 30.025 (1e) (c) This section does not apply ^{to a project} unless one of the following applies:

- 9 1. The applicant is required to obtain a certificate from the public service
10 commission under s. 196.49 or 196.491 (3).
11 2. The applicant is a wholesale electric cooperative, as defined in s. 16.957 (1)

12 (v).

NOTE: Section 16.957 (1) (v) defines "wholesale electric cooperative" as "a
cooperative association that is organized under ch. 185 for the purpose of providing
electricity at wholesale to its members only".

13 **SECTION 8.** 30.025 (1m) of the statutes is amended to read:

14 30.025 (1m) PREAPPLICATION PROCESS. Before [↓] ~~filing an application under this~~ [↓] ~~section, a person proposing to construct a utility facility~~ [↓] ~~an applicant~~ [↓] shall notify the
15 department of the intention to file an application. After receiving such notice, the
16 department shall confer with the person applicant, in cooperation with the
17 commission if the utility project is subject to s. 196.49 or 196.491 (3), [↓] to make a
18 preliminary assessment of the project's scope, to make an analysis of alternatives,
19 and to identify potential interested persons, and to ensure that the person making
20 the proposal is aware. At the time the department confers with the applicant, the
21 department shall provide the applicant written notice of all of the following:

(a) The permits that the person applicant may be required to obtain and the permits under which the person applicant must give notification of the wish intention to proceed.

(b) The information that the person applicant will be required to provide.

(c) The timing of information submissions that the person applicant will be required to provide in order to enable the department to participate in commission review procedures, if the applicant intends to submit the application under sub. (1s) (a) 2., and to process the application in a timely manner.

SECTION 9. 30.025 (1s) (a) (title), (intro.) and 1. of the statutes are created to read:

30.025 (1s) (a) *Submission of application.* (intro.) An applicant shall submit to the department applications for permits, together with the detailed information that the department requires to determine whether an application is complete and to carry out its obligations under sub. (4). *The applicant shall submit an application in one of the following ways:*

1. An applicant may submit a separate application for each permit. *By submitting*

SECTION 10. 30.025 (1s) (a) of the statutes is renumbered 30.025 (1s) (a) 2. and amended to read:

30.025 (1s) (a) 2. ~~Any person proposing to construct a utility facility to which this section applies shall, in lieu of separate application for permits,~~ An applicant may submit one application for all permits together with any additional information required by the department. The An application under this subdivision shall be filed with the department at the same time that an application for a certificate is filed with the commission under s. 196.49 or in a manner consistent with s. 196.491 (3) and shall include the detailed information that the department requires to determine

1 ~~whether an application is complete and to carry out its obligations under sub. (4).~~

2 ~~The department may require supplemental information to be furnished thereafter.~~ ✓

3 ~~Insert from p. 7~~

3 SECTION 11. 30.025 (1s) (b) of the statutes is repealed.

4 SECTION 12. 30.025 (1s) (c) to (f) of the statutes are created to read:

5 30.025 (1s) (c) *Review; no additional information required.* In issuing permits
6 or entering contracts under this section, the department shall review an application,
7 and within 30 days after the application is submitted, the department shall
8 determine that either the application is complete or that additional information ~~is~~ ^{51E1}
9 needed. If the department determines that the application is complete, the
10 department shall notify the applicant in writing of that fact within the 30-day
11 period, and the date on which the notice under this paragraph is sent shall be
12 considered the date of closure.

13 (d) *Additional information requested.* If the department determines that the
14 application is incomplete, the department shall notify the applicant in writing and
15 may make only one request for additional information during the 30-day period
16 specified in par. (c). ✓ Within 10 days after receiving all of the requested information
17 from the applicant, the department shall notify the applicant in writing as to
18 whether the application is complete. The date on which the 2nd notice under this
19 paragraph is sent shall be set as the date of closure. The department may request
20 additional information from the applicant to supplement the application, but the
21 department may not request items of information that are outside the scope of the
22 original request unless the applicant and the department both agree. A request for
23 any such additional information may not affect the date of closure.

24 (e) *Specificity of notice; limits on information.* Any notice stating that an
25 application has been determined to be incomplete or any other request for

1 information that is sent under par. (d) shall state the reason for the determination
2 or request and the specific items of information that are still needed and the
3 statutory authority explicitly requiring the information.

4 (f) *Failure to meet time limits.* If the department fails to meet the 30-day time
5 limit under par. (c) or 10-day time limit under par. (d), the application shall be
6 considered to have a date of closure that is the last day of that 30-day or 10-day time
7 period.

8 **SECTION 13.** 30.025 (2) of the statutes is amended to read:

9 30.025 (2) HEARING. Once the applicant meets the requirements of sub. (1s) (a) ^(am)
10 the department may schedule the matter for a public hearing. Notice of the hearing
11 shall be given to the applicant and shall be published as a class 1 notice under ch.
12 985 and as a notice on the department's Internet Web site. The department may give
13 such further notice as it deems proper, and shall give notice to interested persons
14 requesting same. The department's notice to interested persons may be given
15 through an electronic notification system established by the department. Notice of
16 a hearing under this subsection published as a class 1 notice, as a notice on the
17 department's Internet Web site, and through the electronic notification system
18 established by the department shall include the time, date, and location of the
19 hearing, the name and address of the applicant, a summary of the subject matter of
20 the application, and information indicating where a copy of the application may be
21 viewed on the department's Internet Web site. The summary shall contain a brief,
22 precise, easily understandable, plain language description of the subject matter of
23 the application. One The department shall make one copy of the application shall
24 be available for public inspection at the office of the department, and at least one copy
25 in the regional office of the department, and at least one copy at of the area affected.

1 The department shall send an electronic copy of the application to the main public
 2 library, of the area affected. At the ^{library's} request of the library, the department shall also
 3 send a paper copy of the application. Notwithstanding s. 227.42, the hearing shall
 4 be an informational hearing and may not be treated as a contested case hearing nor
 5 converted to a contested case hearing.

6 Please
Fix Comp

SECTION 14. 30.025 (2g) of the statutes is repealed and recreated to read:

7 30.025 (2g) (2m) (B) SUBMISSION OF INFORMATION TO COMMISSION. (a) This subsection

8 applies to a utility project that is subject to s. 196.49 or 196.491 (3).

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10 (b) The department shall review every proposed utility project that is subject
 to this subsection, including each location, site, or route proposed for each utility

11 facility, to assess whether each proposed location, site, or route can meet the criteria
 12 for obtaining the individual permits or proceeding under the authority of general
 13 permits identified by the department under sub. (1m) (a). (c) The department shall

14 provide the commission with information that is relevant to only the statutes
 15 administered by the department and rules promulgated under those statutes that
 16 the department has explicit authority to enforce.

17 (c) The department shall identify and communicate to the commission all of the
 18 following with regard to each proposed location, site, or route:

19 1. Factors that would require the department to deny one or more permits

20 required for the proposed utility facility to be constructed at the location or site or
 21 on the route.

22 2. Factors that would require the department to impose conditions on one or
 23 more permits required for the proposed utility facility to be constructed at the
 24 location or site or on the route. The department shall identify the nature of the

of a proposed utility
project that is subject to
s. 196.49 or 196.491 (3)

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conditions that would be required and the purposes ^{for imposing} that the conditions ^{would be} intended to accomplish.

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(d) If the application was submitted under sub. (1s) ^(am) (a) 2., the department shall participate in commission investigations or proceedings under s. 196.49 or 196.491 (3) with regard to the proposed utility facility.

SECTION 15. 30.025 (2s) (a) (intro.) of the statutes is renumbered 30.025 (2s) (a) and amended to read:

30.025 (2s) (a) ^(intro.) (intro.) The department shall treat the commission's decision under s. 196.49 or 196.491 (3) as ~~concluding~~ a conclusive finding that there is no practicable alternative for the utility facility if all of the following apply:

SECTION 16. 30.025 (2s) (a) 1. ^{and} ~~to~~ 2. of the statutes are repealed.

SECTION 17. 30.025 (2s) (b) of the statutes is amended to read:

30.025 (2s) (b) ~~If par. (a) applies, the~~ [✓] The department may not require the applicant ~~for the proposed utility facility~~ to undertake further analysis of any utility facility alternatives, including an analysis of alternative methods of meeting the need for the utility project or alternative locations, sites, or routes in order to satisfy the ~~criteria~~ [✓] criterion under sub. (3). The department may identify adjustments that may be required to address permitting issues within the location, site, or route approved by the commission under s. 196.49 or 196.491 (3).

SECTION 18. 30.025 (3) (intro.) and (a) of the statutes are consolidated, renumbered 30.025 (3) (a) and amended to read:

30.025 (3) PERMIT ISSUANCE. (a) The department shall issue, any individual permit or authorize proceeding the applicant to proceed under, the necessary permits any general permit required for the utility project if it finds that the applicant has shown that the proposal: ⁽⁴⁾ ~~Complies~~ complies with environmental statutes

administered by the department and rules promulgated thereunder, and federal environmental standards which that the department has explicit authority to enforce.

SECTION 19. 30.025 (3) (b) of the statutes is repealed.

SECTION 20. 30.025 (3) (c) to (e) of the statutes are created to read:

30.025 (3) (c) The department may not do any of the following:

1. Deny a permit for a proposed utility facility at a location or site or on a route if the department did not identify under sub. (2g) (c) 1. factors that would require it to deny the permit.

2. Impose conditions on a permit that the department did not identify as necessary under sub. (2g) (c) 2. or that are different in nature ^{from} than the conditions the department identified as necessary under sub. (2g) (c) 2.

(d) 1. If ^{an} ~~the~~ application ^{is} ~~was~~ submitted under sub. (1s) (a) 1., the department shall grant or deny the application within 120 days of the date of closure.

2. If the application was submitted under sub. (1s) (a) 2., the department shall grant or deny the application within 30 days of the date on which the commission issues its decision under s. 196.49 or 196.491 (3) or within 120 days of the date of closure, whichever is sooner.

(e) If the department fails to comply with the ^{relevant} ~~pertinent~~ time limit under par.

(d), a decision issuing the permit or authorizing the applicant to proceed shall be considered to be rendered. The permit or authorization to proceed that is rendered shall authorize the activity as proposed by the applicant, but the department may impose terms and conditions on the permit or authorization that are consistent with the applicant's basic proposal.

SECTION 21. 30.025 (4) of the statutes is amended to read:

30.025 (4) PERMIT CONDITIONS. ⁴ ~~The permit may be issued, or the authority to~~ [★]
~~proceed under a permit may be granted, Except as provided in sub. (3) (c) 2., the~~
~~department may issue any individual permit or authorize the applicant to proceed~~
~~under any general permit required for the utility project upon stated conditions~~
~~deemed~~ ^{determined to be} necessary to assure ^{ensure} compliance with the ~~criteria~~ ^{criterion} designated
under sub. (3). ~~The department shall grant or deny the application for a permit for~~
~~the utility facility within 30 days of the date on which the commission issues its~~
~~decision under s. 196.49 or 196.491 (3).~~

SECTION 22. 30.025 (4m) of the statutes is created to read:

30.025 (4m) BASIS OF DEPARTMENT DETERMINATIONS. When providing
information to the commission under sub. (2g) (b) or (c) ^{(2m) ✓} or making a finding or
determination under sub. (2g) (b) ^(3m) (3) (a), or (4), the department shall provide to the
applicant and, if the proposed utility facility is subject to s. 196.49 or s. ^{196.49,} (106.49) (3),
to the commission a written ^{statement} ~~demonstration~~ that all of the following ^{demonstrates} ~~apply~~:

(a) The information, finding, or determination is consistent with the
department's ^{explicit} ~~authority~~ under the statutes it administers and with rules
promulgated by the department and federal standards that the department has
^{explicit} ~~authority~~ to enforce.

(b) The information, finding, or determination is based on sufficient facts or
data and is ^{produced using} ~~the product of~~ reliable principles and methods, and the department has
reliably applied the principles and methods to the facts of the case.

SECTION 23. 30.12 (10) ^(mn) of the statutes is created to read:

30.12 (10) ^(b) ^(1mn) UTILITY FACILITIES. ^{41 (b)} An electric public utility or a wholesale electric
cooperative, as defined in s. 16.957 (1) (v), is exempt from the permit requirements
under this section for any of the following:

(a) The temporary use or placement of equipment or a structure within an existing utility corridor to install, repair, replace, remove, or maintain electric, gas, telephone, water, or sewerage collection, transmission, or distribution facilities, including a pole, support anchor, culvert, clear span bridge, ~~construction mat used to protect wetland or land below the ordinary high water mark, or vehicle driven on the bed of a navigable water.~~

(b) The deposit of material that is associated with the response to or clean up of an ~~inadvertent~~ release of drilling fluid associated with directional boring, if the deposit does not affect more than one ¹⁰ tenth of one acre.

NOTE: With regard to par. (b):

1. Note that "minor amount", used in earlier drafts, is replaced with "does not affect more than one tenth of one acre".

2. Is the placement of material temporary? Should the word "temporary" be added?

3. Is a definition of "directional boring" needed?

4. Is the word "inadvertent" needed?

SECTION 24. 30.20 (1g) ^(d) of the statutes is created to read:

30.20 (1g) ^(d) The removal of material that is associated with the response to or clean up of a ~~inadvertent~~ release of drilling fluid associated with directional boring, if the removal does not affect more than one ¹⁰ tenth of one acre.

NOTE: See the note following the treatment of s. 30.12 (10) (b).

SECTION 25. 59.692 (10) ⁽¹ⁿ⁾ of the statutes is created to read:

59.692 (10) ⁽¹ⁿ⁾ In this subsection, "electric cooperative" means a cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale or retail to its members only. ^(b) This section and ordinances enacted under this section do not apply to a project for the construction and maintenance of electric, gas, telephone, water, or sewerage collection, transmission, or distribution facilities

is exempt from the permit and contracts requirements under this section

1 conducted by a public utility or an electric cooperative in a shoreland if one of the
2 following applies:

3 (a) ^{1.} The department has issued ~~[a permit]~~ ^{all permits} required under chs. 30
4 or 31 related to impacts to navigable waters ^{and under} [or] [and] chs. 281 ~~or 283~~ related
5 to impacts to wetlands that ~~[is]~~ ^{are} required for the project.

6 (b) ^{2.} No permits are required under ch. 30 or 31 related to impacts to navigable
7 waters or ch. 281 or 283 related to impacts to wetlands for the project and the person
8 conducting the project employs best management practices related to storm water
9 management.

NOTE: The drafting instructions refer to a permit required, but s. 59.692 (1o) (a) is drafted here with the alternative of referring instead to all permits required. Which option should be used?

NOTE: The references to permits under chs. 30, 31, 281, and 283, stats., are overly broad; more precise references to specific permits should be provided. Consider referencing the definition of "permit" in s. 30.025 (1b) (b).

NOTE: What are the best management practices referred to in s. 59.692 (1o) (b), as drafted here? Who determines them?

10 **SECTION 26.** 196.491 (3) (a) 3. c. of the statutes is created to read:

11 196.491 (3) (a) 3. c. This subdivision does not apply to a permit that is subject
12 to s. 30.025.

NOTE: In excluding permits subject to s. 30.025 from the procedures specified in s. 196.491 (3) (a) 3., it is necessary to review s. 30.025 to ensure that sufficient procedures are specified in that section.

13 **SECTION 27.** 196.492 of the statutes is created to read:

14 **196.492 Siting of electric facilities.** (1) In this section, "utility facility" has
15 the meaning given in s. 30.025 (1b) (c). ✓

16 (2) Subject to sub. (3), the commission shall have ^{exclusive} ~~sole~~ jurisdiction over the
17 approval of locations, sites, or routes for utility facilities that are subject to s. 196.49
18 or 196.491 (3).

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15-12

(3) In an investigation or proceeding under s. 196.49 or 196.491 (3), the commission shall consider the information provided by the department of natural resources under s. 30.025 (2g) when determining the location, site, or route of a utility facility that is subject to s. 30.025.

(END)

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1 ^{N/A} a person proposing to undertake a utility project for which a permit is required
2 and who is any of the following:

3 1. A person required to obtain a certificate from the public service commission
4 under s. 196.49[✓] or 196.491 (3)[✓] in order to undertake the utility project.

5 2. An electric cooperative, as defined in s. 196.025 (5) (ag).[✓]

INSERT 5-16

6 ~~SECTION 30.025~~ 30.025 (1b) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
7 is amended to read:

8 30.025 (1b) (b) "Permit" means an individual permit, a general permit, an
9 approval, or a contract required under this subchapter or subch. II, a permit or an
10 approval required under ch. 31, an incidental taking permit required under s. 29.604
11 (6m)[✓], a storm water discharge permit required under s. 283.33 (1) (a) or (am),
12 authority to proceed under a general storm water discharge permit required under
13 s. ~~283.35~~ ^{283.33} or a wetland general permit or wetland individual permit required under
14 s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement 33 USC
15 1341 (a).

History: 2013 a. 20.

16 ~~SECTION 30.025~~ 30.025 (1b) (c) of the statutes is amended to read:

17 30.025 (1b) (c) "Utility facility" means a project, as defined in s. 196.49 (3) (a),
18 plant, equipment, property[↓], or ~~a facility, as defined in s. 196.491 (1) (e) for the~~
19 generation, transmission, or distribution of electric power.

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167.

INSERT 6-12

→ SECTION # RP; 30.025 (1e) (title)

① ~~SECTION #~~ 30.025 (1e) (a) of the statutes, as affected by 2013 Wisconsin Act 1,
2 is repealed.

3 ~~SECTION #~~ 30.025 (1e) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
4 is renumbered 30.025 (5) (b) and amended to read:

5 30.025 (1e) (b) This section does not apply to a proposal to construct a utility
6 facility if the only permit that the utility facility is required to obtain from the
7 department is a storm water discharge permit under s. 283.33 (1) (a) or (am) or
8 authority to proceed under a storm water discharge general permit issued by the
9 department under s. 283.35. ~~283.35~~

History: 2013 a. 20.

10 ~~SECTION #~~ 30.025 (1e) (c) of the statutes, as created by 2013 Wisconsin Act 1,
11 is renumbered 30.025 (5) (c).

INSERT 6-15

12 ~~Not~~ files an application for a permit, the applicant

INSERT 10-6

13 ~~SECTION #~~ 30.025 (2m) of the statutes is created to read:

INSERT 13-21

14 ~~SECTION #~~ 30.025 (5) (title) of the statutes is repealed and recreated to read:
15 30.025 (5) (title) EXCEPTIONS.

16 ~~SECTION #~~ 30.025 (5) of the statutes is renumbered 30.025 (5) (a).

INSERT 14-6 13-23

17 ~~Not~~ (a) In this subsection:

18 1. "Construction" means installation, repair, replacement, removal, or
19 maintenance.

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2. ³ (2) "Structure" includes a pole, support anchor, culvert, clear ^o span bridge, or construction mat used to protect a wetland or land below the ordinary high ^o water mark.

2. ^e (3) "Facility" means a facility used to transmit or distribute electricity, gas, water, or telephone service or to collect sewerage.

INSERT 14-6

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1. ^e (a) The temporary use or placement within an existing utility corridor of equipment or a structure for a purpose associated with the construction of a facility.

2. ^e (b) The temporary use or placement within an existing utility corridor of a vehicle on the bed of a navigable water for a purpose associated with the construction of a facility.

INSERT 15-12
Δ

11 ~~SECTION 196.491~~ (3) (a) 3. a. of the statutes is amended to read:

12 196.491 (3) (a) 3. a. At least 60 days before a person files an application under
13 subd. 1., the person shall provide the department with an engineering plan if the
14 facility is a large electric generating facility. The engineering plan shall show the
15 location of the facility, a description of the facility, including the major components
16 of the facility that have a significant air, water or solid waste pollution potential, and
17 a brief description of the anticipated effects of the facility on air quality, water
18 quality, wetlands, solid waste disposal capacity, and other natural resources. Within
19 30 days after a person provides an engineering plan, the department shall provide
20 the person with a listing of each department permit or approval, other than a permit
21 or approval listed under ^e s. 30.025 (1b) (b), which, on the basis of the information

Δ

- 1 contained in the engineering plan, appears to be required for the construction or
- 2 operation of the facility.

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33, 89; 2005 a. 24, 29; 2007 a. 20 s. 9121 (6) (a); 2009 a. 40, 378, 379; 2011 a. 32, 155; 2011 a. 260 s. 81; 2013 a. 1, 10.

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INSERT X
(to INSERT 15-12)

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FROM THE
LEGISLATIVE REFERENCE BUREAU

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RCT:....ph

INSERT X (to INSERT 15-12)

1 **SECTION ~~196.491~~** 196.491 (3) (a) 3. b. of the statutes is amended to read:

2 196.491 (3) (a) 3. b. Except as provided under subd. 3. c., within 20 days after

3 the department provides a listing specified in subd. 3. a. to a person, the person shall

4 apply for the permits and approvals identified in the listing. The department shall

5 determine whether an application under this subd. 3. b. is complete and, no later

6 than 30 days after the application is filed, notify the applicant about the

7 determination. If the department determines that the application is incomplete, the

8 notice shall state the reason for the determination. An applicant may supplement

9 and refile an application that the department has determined to be incomplete.

10 There is no limit on the number of times that an applicant may refile an application

11 under this subd. 3. b. If the department fails to determine whether an application

12 is complete within 30 days after the application is filed, the application shall be

13 considered to be complete. ~~Except as provided in s. 30.025 (4), the~~ ^{The} department shall

14 complete action on an application under this subd. 3. b. for any permit or approval

15 that is required prior to construction of a facility within 120 days after the date on

16 which the application is determined or considered to be complete.

NOTE: NOTE: Subd. 3. b. is shown as affected by 2013 Wis. Acts 1 and 10 and as merged by the legislative reference bureau under s. 13.92 (2) (i).NOTE:

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33, 89; 2005 a. 24, 29; 2007 a. 20 s. 9121 (6) (a); 2009 a. 40, 378, 379; 2011 a. 32, 155; 2011 a. 260 s. 81; 2013 a. 1, 10.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1884/P1dn

RNK:f:....

Wly

Date

This draft is in preliminary form. Please note that it does not yet include the Legislative Council prefatory note or an LRB analysis. Those items will be included in a later version of the draft.

Please also note the following:

1. I made a number of changes to the structure of the draft to conform the draft to current drafting style. Consequently, those changes are technical in nature and are not intended to be substantive. Please let me know if any of those changes have the effect of altering the proposal in a manner that is not consistent with your intent.
2. There are some terms used in the draft that are somewhat vague. For example, s. 30.025 (3) (e), as created in the draft, refers to the applicant's "basic" proposal. I'm not sure what the term "basic" refers to in the context of this provision. Similarly, s. 30.025 (4m) (b), as created in the draft, requires DNR to have "reliably applied" certain principles and methods. Again, I'm not sure what it means to reliably apply principles and methods. And it is not clear to me who determines reliability in this context. I would be happy to discuss these items with you if you would like to rework this language to make it somewhat more precise.

Please let me know if you have any questions with regard to this draft.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1884/P1dn
RNK:wlj:jm

August 14, 2013

This draft is in preliminary form. Please note that it does not yet include the Legislative Council prefatory note or an LRB analysis. Those items will be included in a later version of the draft.

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Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov